IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7441 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHANDRAKANT @ CHANDULAL CHHOTALAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7441 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 15/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Ms.Subhadra Patel for the petitioner detenu and ld. AGP Ms. Punani.

Affidavit-in-reply filed by the Commissioner of Police, Rajkot City tendered today by ld. AGP Ms. Punani is taken on record.

2. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner detenu has challenged the legality and validity of the order of detention dated 07.06.2004 passed by the Commissioner of Police, Rajkot City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The petitioner detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

3. The grounds for detention supplied to the detenu petitioner indicate that for recording subjective satisfaction, the detaining authority has mainly considered registration of three different criminal offences by three different police stations of Rajkot City on the same day i.e. 03.06.2004 for the offences punishable under Sections 66B, 65AE, 116B and 81 of The Bombay Prohibition Act. The detenu was arrested on the same day i.e. on 03.06.2004. Over and above this aspect, it is clear that the sponsoring authority had also placed two statements recorded by it as to the activities of the present petitioner detenu on 04.06.2004 i.e. immediately after the registration of the commission of the offence and immediately after his arrest. Said witnesses were produced before the detaining authority on 05.06.2004 who have claimed privilege flowing from sec.9(2) of the PASA Act and on the basis of this material, the detaining authority has recorded satisfaction that bootlegging activities of the present petitioner -detenu is detrimental to the maintenance of public order and of public health.

4. The impugned order of detention has been assailed on number of grounds as mentioned in the memo of petition. However, ld. counsel Ms. Subhadra Patel has mainly focussed her arguments on two grounds. The backbone of her submission is that though three different offences are registered by three different police stations, but in reality, this is a case of a single solitary offence and detenu has been falsely implicated in two other offences wherein he is not even named in FIR i.e. FIRs registered with "B" Division Police Station and Bhaktinagar Police Station respectively. So, this court finds force in the submission of ld. counsel Ms. Patel that the facts of registration of three offences if accepted as they are, the activities of the present petitioner detenu can not be said to have potentiality to

disturb the maintenance of public order. At the most, it can be said to be a wrong committed qua the maintenance of law and order. In such or similar facts situation, the detenu can also legitimately advance an argument that for the purpose of evaluating his case in a petition whereby preventive detention order is challenged, the ratio of the decision of the Apex Court in the case of Sohanlal Surajram Visnoi v/s State of Gujarat & Ors., 2004(2) GLR 1051, would squarely apply and hence the impugned order of detention requires to be quashed as the case the present case is squarely covered by the ratio of the aforesaid decision. There is considerable force in the arguments of ld. counsel Ms. Patel that there is a scope of false implication of the detenu in the other two offences by investigating agency so as to push the present petitioner under preventive detention carving out proposal of that nature.

5. I have gone through the above-cited decision. For the sake of convenience, I would like to quote relevant paras 4 & 5 of the said decision:-

> "4. Article 22(3) of the Constitution of India expressly provides that the safeguards contained in Art.22(1) and 22(2) of the Constitution are not to apply to preventive detention. Article 22(4) of the Constitution provides and opens with double negative, put in positive form, and in its real substance, means that a law which provides for preventive detention for a period longer than three months, shall contain all the provisions prescribed in clauses (4) and (5) of Article 22 of the Constitution. Article 22(5) of the Constitution prescribes that when any person under a preventive detention law is detained, the authority making the order, shall as soon as may be, communicate to such person, the grounds on which the order has been made, and shall afford him with the earliest opportunity of making a representation against the order. Article 22(5) of the Constitution is of general importance and operation in respect of every detention order made under any preventive detention law.
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> 5. In this group of petitions, all the detenus, except one in Special Civil Application No.825 of 2003, are treated and described as "bootleggers" as defined under Sec.2(b) of the P.A.S.A. Act and only one offence is registered against each detenu under the provisions of the Bombay Prohibition Act, 1949. Whereas in Special

> Civil Application No.825/2003, the detenu is treated as "dangerous person" as defined in Sec.2(c) of the P.A.S.A. Act, and in this case also, a solitary incident is made basis for passing the detention order against him."

6. Careful consideration of facts stated in the statements of two independent witnesses who have claimed privilege of secrecy, do not inspire confidence and it seems that these statements have been recorded by the sponsoring authority only with a view to develop the case before the detaining authority, otherwise, one of the witnesses i.e. witness no.1 could not have waited for about 2 months and 20 days in unfolding the story before the police. Second statement also describes one incident allegedly occurred on 22.05.2004. This witness has named many persons i.e. Bhavarsingh, Bharatsingh, Dalsukh, Niraj and Sunil. It is not clear as to how many of the persons named by these witnesses were placed under order of preventive detention, but it is possible to infer that the statement of the second witness does not inspire confidence. So, on such set of facts, it was not possible objectively to reach to a conclusion that the activities of the present petitioner is detrimental to the maintenance of public order. There was no scope to exercise privilege under Sec.9(2) of the PASA Act. So, the arguments of ld. counsel Ms. Patel shall have to be accepted.

7. The Court is also satisfied that the explanation as to the delay caused in dealing with the representation in an expeditious manner, is also not satisfactorily explained. There is no formal affidavit on behalf of the State of Gujarat because substantive delay was caused in dealing with and deciding the representation and also in communicating the decision to the detenu by the State Government. Undisputedly, the representation has reached to the office of detaining authority on 24.06.2004, but for the reasons best known to the authority, that has not reached to the government till 30.06.2004. The State Government has also not explained as to why the same was not considered and dealt with promptly. The government took decision on 02.07.2004. The decision thereafter was communicated to the petitioner on 06.07.2004. Zerox copy of the communication received by the detenu shown to the Court for perusal by Ms. Patel strengthens the say of the petitioner. So, such a detention order can not sustain on this ground also.

8. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 07.06.2004 passed by the Police Commissioner, Rajkot City, is hereby quashed and set aside and detenu is hereby ordered to be

set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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